IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Regular First Appeal No.298 of 1997.
Date of decision:03.05.2007.

M/s.Himachal Dhatu Udyog & Anr. **….Appellant**

Versus

H.P. Financial Corporation **….Respondent**

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The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Appellants: Mr.Bhupender Gupta, Senior Advocate with Ms.Charu Gupta, Advocate.

For the Respondent: Mr.Ajay Kumar, Advocate.

Dev Darshan Sud,J.

This is defendants appeal against the judgment and decree of the learned trial Court, whereby the suit of the plaintiff-respondent has been decreed.

The respondent, who was plaintiff before the trial Court, instituted a suit for recovery of Rs.3,28,640/- with future interest from 21.2.1989 till its realization. The plaintiff has averred that the appellant had taken a loan of Rs.3.50 lacs for purchase of plant, machinery and construction of a building for manufacturing of stainless steel utensils etc. at Paonta Sahib. A sum of Rs.3.10 lacs was sanctioned which was utilized by the appellants from time to time. The

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement?***

plaintiff-respondent had also executed agreement dated 19.9.1983, deed of hypothecation and guarantees of the same date, security of the loan amount. An equitable mortgage was created by deposit of title deeds. The plaintiff alleges that the appellants failed to pay the outstanding loan amount and as such, possession of the assets was taken over by the plaintiff pursuant to the provisions of Section 29 of the State Financial Corporation Act, 1951, (hereinafter referred to as the "Act"). The assets were sold after giving due publicity by way of public auction. The appellants had been called upon to produce a better buyer which he did not do. After adjusting the amount of Rs.two lacs, the plaintiff filed a suit for the balance amount.

The suit of the plaintiff was resisted by the defendants on a number of grounds, principally on the ground of limitation. The appellants-defendants further averred that the amount could not be paid due to the ill health of defendant No.2, who was managing affairs of the industrial unit. It was submitted that the assets were sold without realizing their actual market price and without due publicity. The suit was initially instituted in this Court, but with the increase of the pecuniary jurisdiction, the suit was transferred to the Court of learned District Judge, Shimla, who by his judgment and decree dated 20.5.1997 has decreed the suit holding them to be liable for a sum of Rs.3,28,640/- alongwith costs and interest @ 14.5% per annum with half

yearly rests from 21.1.1989 till realization of the decreed amount.

I have heard learned counsel for the parties and have gone through the record.

The question regarding limitation has already been decided by the Hon'ble Supreme Court in ***H.P. Financial Corporation*** *vs.* ***Smt.Pawana and Others, Civil Appeal No.1971 of 1998, decided on 18th December, 2003,*** holding that cause of action to sue arises after the assets have been disposed of by the Financial Corporation exercising its statutory right under Section 29 of the Act ibid. It has been held that the Financial Corporation would be well within its right to sue for the balance amount recoverable after sale of the assets. The decision of this Court holding otherwise was reversed.

Admittedly, the suit is within limitation from the time when the industrial unit of the appellant-defendant has been put to sale. The submissions of the learned counsel appearing for the appellants, therefore, cannot be accepted. The learned trial Court, while dealing with the issue of limitation, has also considered the fact that two payments were made, namely; an amount of Rs.16,525/- on 2.7.1985 and Rs.5000/- on 10.12.1986. These payments have been admitted by the plaintiff. The learned trial Court holds that the amount having been paid towards part satisfaction of the

liability, the suit cannot be treated as being time barred.

Learned counsel appearing for the appellants submits that the assets of the appellants-defendants have been dealt with in a negligent manner and have been sold at a throw away price. According to him, there is sufficient evidence on the record to show that no offer has been made to get the best possible price for the assets. Had such an offer been made, the liability of the appellants-defendants would have been written off.

I have considered the evidence on the record. PW-1, who was the Manager of the plaintiff-respondent, has submitted that a notice Ex.PK was issued on 5.5.1986 and sent to the appellants-defendants by registered post, calling upon them to clear the defaulted amount. No reply was filed to this notice. Consequently, the plaintiff was left with no option, but to take over the industrial unit and sell it in accordance with law. The sale conducted by auction was widely advertised in the newspapers circulating in the area. The sale was made on 18.6.1988. Evidence on the record further shows that three notices Exs.PO, PP and PQ were sent to the defendants calling upon them to produce a better buyer before confirmation of the sale, but again there was no response from the defendants. These letters were sent by Registered AD post and when confronted with these facts, the defendant admitted that the address as given in the notice was correct. In these circumstances, it

cannot be said that the plaintiff has been negligent, remiss or careless in disposing of the property of the appellants-defendants.

The learned counsel for the appellants has also urged that the amount due has not been rightly determined and the rate of interest is excessive. I do not find any substance in the submissions of the learned counsel since there is no material on the record to show that the plaintiff has claimed an amount in excess of the amount due.

In the totality of the circumstances, the appeal is dismissed. There shall be no order as to costs.

May 3, 2007. **(Dev Darshan Sud)**
(aks) **Judge.**